

## **Chapter 3.12 TRANSIENT OCCUPANCY TAX**

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### **Note**

\* Prior ordinance history: Ords 706, 707, 824, 1029, 1094 and 1561.

### **3.12.010 Title.**

This chapter shall be known as the "Transient Occupancy Tax Ordinance of the city of Upland." (Ord. 1802 § 2, 2006; prior code § 2530.1)

### **3.12.020 Definitions.**

Except where the context otherwise requires, the definitions given in this section shall govern the construction of this chapter.

"Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, roominghouse, apartment house, rental unit, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

"Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

"Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

"Person" means any individual, firm, partnership, joint venture association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

"Tax administrator" means the finance director of the city or the person designated by the finance director to act in the finance director's place.

"Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant obliging the occupant to pay market rate for the occupancy for a period of at least 31 consecutive days. The tax administrator may develop and promulgate standard forms setting for the minimum substance of such agreements, and may require submission of such forms with the returns required by Section 3.12.070. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this section may be considered. (Ord. 1802 § 2, 2006; prior code § 2530.2)

### **3.12.030 Tax imposed.**

A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of 10 percent of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator of the hotel at the same time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If, for any reason, the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

B. In the event that an agreement exists between the hotel and any person for occupancy, as defined in this chapter, for a period in excess of 30 days, and in the event that such person allows occupancy by another person for 30 days or fewer as subtenant, guest, licensee or permittee, the person who has made the agreement with the hotel as aforesaid shall be subject to and shall pay the tax provided for herein. (Ord. 1802 § 2, 2006; prior code § 2530.3)

### **3.12.040 Exemptions.**

A. No tax shall be imposed upon:

1. Any officer or employee of the United States of America when traveling on official business.
2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

B. No exemption shall be granted except upon a claim in writing made at the time rent is collected upon a form complying with subsection (e) of Section 7280 of the [Revenue and Taxation Code](#). The tax administrator may require submission of copies of such forms with the returns required by Section 3.12.070. (Ord. 1802 § 2, 2006; prior code § 2530.4)

### **3.12.050 Responsibility of operator.**

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded, except in the manner hereinafter provided. (Ord. 1802 § 2, 2006; prior code § 2530.5)

### **3.12.060 Registration of hotel.**

A. Within 30 days after the effective date of the ordinance codified in this chapter or within 30 days after commencing business, whichever is later, each operator of any hotel shall register with the tax administrator. Upon registration, each hotel operator shall obtain a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises.

B. Such certificate shall, among other things, state the following:

1. The name of the operator;
2. The address of the hotel;
3. The date upon which the certificate was issued.

C. In addition, such certificate shall bear the following text:

This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the uniform transient occupancy tax article by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting such tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including, but not limited to those of this city. This certificate does not constitute a permit.

(Ord. 1802 § 2, 2006; prior code § 2530.6)

### **3.12.070 Reporting and remitting.**

Each operator shall, on or before the last day of the month following the close of each calendar quarter or of such different reporting period as may be established by the tax administrator, make a return to the tax administrator, on forms provided by the tax administrator, of the total rents charged and received, the amount of tax collected for transient occupancies, and such other information as may be reasonably required. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish either shorter or longer reporting periods for any individual certificate holder or category of certificate holders if the tax administrator deems it necessary or desirable in order to insure collection of the tax or to increase the efficiency of its administration. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator. (Ord. 1802 § 2, 2006; prior code § 2530.7)

### **3.12.080 Reporting and remitting upon cessation or transfer of business.**

A. An operator who is transferring, selling, or terminating its business shall notify the tax administrator in writing at least 30 days in advance of the date of transfer, sale, or termination. If the decision to sell, transfer, or terminate the business is made fewer than 30 days before the transfer, sale, or termination occurs, the operator shall notify the tax administrator immediately upon making that decision and in no event later than the date of transfer, sale, or termination. The operator shall at the same time notify in writing any purchaser or transferee of its hotel of the purchaser's or transferee's potential responsibility for unpaid collected taxes if any, as set forth in this chapter and in [Revenue and Taxation Code](#) Section 7283.5.

B. Upon cessation of business, whether by sale, transfer, or termination, an operator shall, on or before the same day of the next month following the cessation of business, or on the last day of that month if no corresponding day exists, make a return to the tax administrator on approved forms of the total taxable rents charged, the amount of tax collected for the reporting period ending on the cessation date, remittances made, if any, and the balance of the tax due. The balance of tax due, if any, shall be remitted to the tax administrator at the time the final return is filed. After filing the final return and remitting the balance due, the operator shall make its records of account available for a closeout audit by the tax administrator or his or her designee. Returns filed and taxes remitted and actually received by the tax administrator on or before the same day of the next month following cessation of business, or on the last day of that month if no corresponding day exists, shall be timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by this chapter.

C. Any person purchasing an ongoing hotel business may apply to the tax administrator for a tax clearance certificate showing the tax due, if any, from the selling operator as of a date specified in the tax clearance certificate request. For purposes of this section, successive hotel businesses conducted without substantial interruption at the same hotel shall constitute an ongoing hotel business.

1. The issuance and effect of such certificates shall be as set forth in [Revenue and Taxation Code](#) Section 7283.5.
2. Before requesting records and conducting the audit permitted by subdivision (b) of [Revenue and Taxation Code](#) Section 7283.5, the tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. The tax administrator shall notify the selling operator of this estimate when requesting records for audit. If the selling operator fails to provide records in response to the request within 30 days after the serving or mailing of the estimate and record request, the tax administrator may issue a tax certificate in the amount of the estimate.
3. By resolution, the city may set an administrative fee for issuance of any such certificate. (Ord. 1802 § 2, 2006; prior code § 2530.8)

### **3.12.090 Penalties and interest.**

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10 percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the 10 percent penalty first imposed.

C. Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one percent per month for each month or portion of a month that the tax shall be delinquent on the amount of the tax, exclusive of penalties, from the date on which the tax first became delinquent until paid. The interest shall be computed on a monthly basis and shall not be subject to proration for any portion of a month.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. 1802 § 2, 2006; prior code § 2530.9)

### **3.12.100 Failure to collect and report tax.**

A. If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as the tax administrator may deem best to obtain facts and information on which to base an estimate of the tax due.

B. As soon as the tax administrator shall procure such facts and information as the tax administrator is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the tax administrator shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In the event such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his or her last known address.

C. Such operator may within 10 days after the serving or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable.

D. If such application is made, the tax administrator shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in Section 3.12.110. (Ord. 1802 § 2, 2006; prior code § 2530.10)

### **3.12.110 Appeal.**

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk within 15 days of the serving or mailing of the determination of tax due. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 1802 § 2, 2006; prior code § 2530.11)

### **3.12.120 Records.**

A. It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as the operator may have been liable for the collection of and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times.

B. All tax returns and information furnished by any operator pursuant to this chapter shall be confidential and shall not be open to public inspection nor the specific contents thereof disclosed by any officer or employee except as necessary in the performance of official duty pursuant to this chapter, or in the course of any proceeding, hearing or litigation involving the existence or amount of the tax liability of such operator, or with the written consent of the operator or authorized representative. (Ord. 1802 § 2, 2006; prior code § 2530.12)

### **3.12.130 Refunds.**

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section. No refund shall be issued except upon a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, filed with the tax administrator within one year of the date of payment. The claim shall be on forms furnished by the tax administrator. Each person seeking a refund must file an individual claim; no class claims shall be recognized.

B. Claim by Operator. An operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. Claim by Transient. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the tax administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

D. Evidence. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. 1802 § 2, 2006; prior code § 2530.13)

### **3.12.140 Tax declared a debt—Action to collect.**

A. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovering of such amount.

B. Failure of an operator to collect tax required to be paid by any transient shall not excuse the operator's obligation under this chapter. An operator must pay to the city any tax required to be paid by any transient, whether or not the operator collects such tax from that transient.

C. If any amount required to be paid to the city under this chapter is not paid when due, the tax administrator may, within 10 years after the amount is confirmed according to the procedure set forth in Section 23.12.100, file for record in the office of the San Bernardino County recorder a certificate specifying the amount of tax, penalties, and interest due; the name and address, as it appears on the tax administrator's records, of the operator liable for the tax, penalties, and interest; and the fact that the tax administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of filing for record, the amount of the tax, penalties, and interest constitutes a lien upon any real property in the county owned by the operator or acquired by the operator thereafter. This lien has the force, effect, and priority of a judgment lien and shall continue for 10 years from the time of filing of the certificate, unless sooner released or otherwise discharged, or unless renewed for subsequent periods in the manner prescribed by law. This chapter does not give the city a preference over any recorded lien that was attached before the date when the amounts required to be paid became a lien.

D. The amounts required to be paid by any operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

1. Whenever the operator is insolvent;
2. Whenever the operator makes a voluntary assignment of its assets;
3. Whenever the estate of the operator in the hands of executors, administrators, heirs, or receivers is insufficient to pay all debts;
4. Whenever the estate and effects of an absconding, concealed, or absent operator required to pay any amount under this chapter are levied upon by process of law. (Ord. 1802 § 2, 2006; prior code § 2530.14)

### **3.12.150 Penalty for violations.**

Any operator or other person who fails or refuses to register as required in this chapter, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor and is punishable as provided in Section 1.16.010 of this code. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid. (Ord. 1802 § 2, 2006; prior code § 2530.15)

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## **Contact:**

City Clerk: 909-931-4120

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